



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 07-42

BILL 53 (2007), CD1

A BILL FOR AN ORDINANCE

TO REZONE LANDS SITUATED AT 91-101 MALAKOLE STREET AT THE MALAKOLE STREET INTERSECTION WITH KALAELOA BOULEVARD, EWA, OAHU, HAWAII.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Zoning Map No. 14, Barbers Point – Kahe – Nanakuli, Ordinance 86-116, is hereby amended as follows: Land situated at 91-101 Malakole Street at the Malakole Street intersection with Kalaeloa Boulevard, Ewa, Oahu, Hawaii, hereinafter described, is hereby rezoned from AG-2 General Agricultural District to I-2 Intensive Industrial District with a height limit of 60 feet. The boundaries of said Intensive Industrial District shall be described as shown on the map attached hereto, marked “Exhibit A-1” and made a part hereof, and further identified as Tax Map Key: 9-1-15: portion of 013, and 9-1-075: 044, 050, 051, and portion of 052.

SECTION 2. A Unilateral Agreement marked “Exhibit B” is by reference incorporated herein and made a part hereof.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 07-42

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A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Barbara Marshall (BR)

DATE OF INTRODUCTION:

June 26, 2007
Honolulu, Hawaii

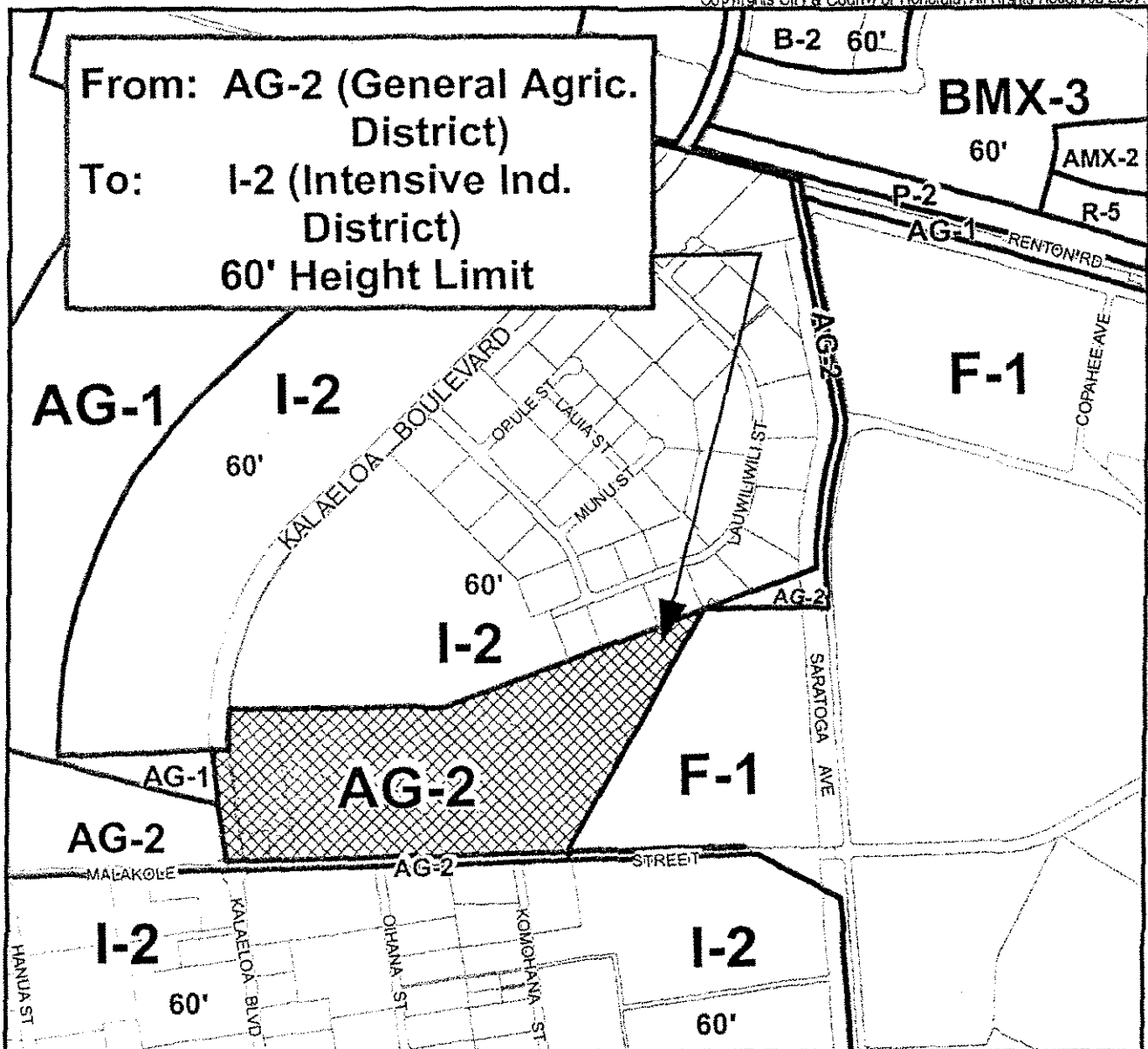
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don L. Kitaoka
Deputy Corporation Counsel

APPROVED this 29th day of October, 2007.

Mufi Hannemann
MUFU HANNEMANN, Mayor
City and County of Honolulu



PORTION OF
ZONING MAP NO. 14
 (BARBER'S POINT - KAHE - NANAKULI)

Land situated along Malakole Street and Kalaeloa Boulevard adjacent to and below the Kapolei Business Park.



0 500 1,000

Scale in Feet



APPLICANT: HMC Irongate Hawaii Raceway Investors, LLC

TAX MAP KEY(S): 9-1-75: 44,50,51 & Por.52 and 9-1-15: Por.13

FOLDER NO.: 2006/Z-14

LAND AREA: Approx. 68.7 Acres

PREPARED BY: DEPARTMENT OF PLANNING & PERMITTING
 CITY AND COUNTY OF HONOLULU

PUBLIC HEARING: PLANNING COMMISSION

CITY COUNCIL

AUG 15 '07

ORD. NO. 07-42

JUN 13 2007

2006/Z-9

EFF. DATE:

OCT 29 2007

EXHIBIT A-1

BILL 53 (2007), CD1

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was
recorded as follows:

DOCUMENT NO. Doc 3657362
DATE CTN 813,728
SEP 18, 2007 09:00 AM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK UP (X)

Imanaka Kudo & Fujimoto (OTI)
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813
Phone: 521-9500

Tax Map Key No. (1) 9-1-75:44 and 50

Total Pages: 25

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTY TO DOCUMENT: HMC Irongate Hawaii Raceway Investors LLC

TAX MAP KEY NO.: (1) 9-1-75: 44 and 50

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 18th day of September, 2007, by HMC Irongate Hawaii Raceway Investors LLC, a Delaware limited liability company, whose address is 10880 Wilshire Boulevard, Suite 2222, Los Angeles, California 90024 (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of those certain parcels of land situated at Honouliuli, City and County of Honolulu, State of Hawaii, consisting of approximately 65.817 acres, described as Tax Map Key Nos. (1) 9-1-75: 44 and 50, and more particularly described in Exhibits A and B attached hereto and made a part hereof (the "Land"), and desire to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to develop an industrial park on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from AG-2 General Agricultural District to I-2 Intensive Industrial District with a 60-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 53, CD1 (2007), was held by the Council on August 15, 2007; and

WHEREAS, the Council recommended by its Zoning Committee Report No. 302 that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. The Declarant shall submit a Wastewater Master Plan to address on-site and regional wastewater system issues for approval by the Department of Planning and Permitting (DPP) and Department of Environmental Services.
2. The Declarant shall carry out the following requirements related to traffic and transportation improvements:

- a. The Declarant shall prepare and receive approval for an updated Traffic Impact Analysis Report (TIAR) for the Land prior to the issuance of major building permits for this development. The TIAR shall further refine and identify traffic impacts and associated mitigation measures directly attributable to vehicular rates being generated by the Project. The TIAR shall include but not be limited to, locations warranting traffic signals, provisions for auxiliary turn lanes and lengths, channelized right turn lanes, size of pedestrian islands, and other traffic considerations, as required. The TIAR shall also include a possible extension of Komohana Street at Malakole Street through the Project site. The TIAR shall be reviewed and approved by the DPP in consultation with the State Department of Transportation (DOT) and the Department of Transportation Services (DTS).
- b. The Declarant shall prepare a Construction Management Plan (CMP) prior to the issuance of grading or demolition permits and shall identify the type, frequency and route of heavy trucks and construction related vehicles traversing in and around the construction site, as it relates to the use of any public street. Every effort shall be made to limit and minimize impacts from these vehicles and the associated construction activities. The CMP shall include provisions to limit vehicle activity to periods outside of the peak periods of traffic, utilizing alternate routes for heavy trucks, utilizing off-site parking areas for construction workers and other traffic related considerations, as required. The CMP shall be reviewed and approved by the DPP in consultation with the DOT and DTS.
- c. The Declarant and/or the assigned responsible party shall prepare a transportation management plan (TMP) prior to the issuance of the Certificate of Occupancy for any major buildings for the Project. The TMP shall identify traffic demand management (TDM) strategies to be utilized by the management company of the industrial park to minimize vehicular traffic directly attributable to the Project. These TDM strategies could include transit incentives, car pool program for employees and other similar TDM measures to reduce overall traffic to the site. The TMP shall be reviewed and approved by the DPP in consultation with the SDOT and DTS.

- d. The Declarant shall fund, construct or cause to be constructed, its fair share of roadway improvements to mitigate Project impacts directly attributable to the Project as described in the TIAR, and supplemental updates as may be required by State and City transportation agencies, prior to Project completion.
 - e. The Declarant has executed and duly recorded a Memorandum of Agreement (MOA) with the DOT dealing with the Declarant's participation in the funding and construction of local and regional roadway improvements, including the dedication of rights-of-way. The MOA is attached to this Unilateral Agreement as Exhibit C and made a part hereof. The Declarant shall meet the applicable conditions of the MOA for highway improvements in the timeframe prescribed therein. The MOA may be amended, provided that any amendment shall be approved by DOT.
- 3. The Declarant shall determine the location of Well No. 1906-07. If the well is located within the Land and is not planned for future use, the Declarant shall properly abandon and seal the well and show Commission on Water Resource Management (CWRM) approval of the completed sealing of the well prior to building permit approval. If the well is located on the Land and is planned for future use, the Declarant shall show submittal of a Water Use Permit Application to the CWRM prior to building permit approval.
 - 4. The Declarant shall construct a nonpotable water system on the Land and connect to the area nonpotable water system, as required by the Board of Water Supply (BWS).
 - 5. The Declarant shall, in order to ensure that all proposed uses, activities, and structures within the Land are screened for hazards to aircraft, either establish its own screening process that shall involve the DOT or else grant an aviation easement that shall allow DOT review, prior to the subdivision of the property into individual industrial lots or development of a condominium property regime to establish individual industrial lots.

6. The Declarant shall inform all prospective purchasers or lessees of properties in the Project of the potential impacts, including but not limited to aircraft operations and noise in the vicinity.
7. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.
8. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The status report will be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. If a status report is not submitted within the time specified, the DPP may defer the processing of permits until a status report is submitted.
9. In the event of noncompliance with any of the conditions set forth herein, the Director of DPP shall inform the Council and may initiate action to rezone the Land, seek civil enforcement, or take appropriate action to terminate or stop the Project until applicable conditions are met. Failure to fulfill any of the conditions to the zone change may be grounds for revocation of the permits issued under this zoning and grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare

and the further implementation of the General Plan of the City and County of Honolulu.


That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the DPP may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or his successors and assigns may file a petition with the DPP for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the party hereto has executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT: HMC Irongate Hawaii Raceway Investors LLC


 By Adam Fisher
 Its Authorized Representative

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

} ss.

On

Sept. 5, 2007

Date

before me,

Alana Jacobs, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally

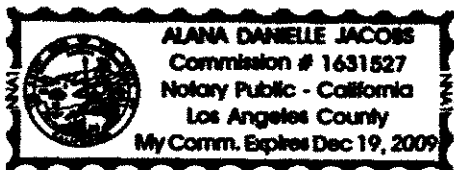
appeared

Adam Fisher

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
 Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
 Top of thumb here

EXHIBIT "A"

All of those certain parcels of land situate at Honouliuli, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

FIRST:

LOT 3801-A-1 (area 7.006 acres), as shown on Map 907, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

TOGETHER WITH access over and across Lot 425-C-1, as shown on Map 373, as set forth by Land Court Order No. 72368, filed January 11, 1985.

BEING a portion of the land described in and covered by Certificate of Title No. 813,728.

SUBJECT, HOWEVER, to the following:

1. Setback (40 feet wide), road setback line, as shown on Map 149 as set forth by Land Court Order No. 21581, filed August 8, 1963.
2. Setback (50 feet wide), as shown on Map 149 as set forth by Land Court Order No. 21581, filed August 8, 1963.
3. Designation of Easement "6259", as shown on Map 907, as set forth by Land Court Order No. 128936, filed September 15, 1997.
4. Designation of Easement "7764", as shown on Map 1129, for communication purposes, as set forth by Land Court Order No. 146214, filed June 10, 2002.
5. Grant dated March 13, 2003, filed in said Office as Document No. 2904270, in favor of Verizon Hawaii Inc., a Hawaii corporation, now known as Hawaiian Telcom, Inc., granting a perpetual right and easement for utility purposes, over, under, upon, across and through Easement "7764".
6. Designation of Easement "8265", as shown on Map 1215, for sanitary sewer purposes, as set forth by Land Court Order No. 157919, filed September 2, 2004.

SECOND:

LOT 3801-B (area 58.811 acres), as shown on Map 881, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

TOGETHER WITH access over and across Lot 425-C-1, as shown on Map 373, as set forth by Land Court Order No. 72368, filed January 11, 1985.

BEING a portion of the land described in and covered by Certificate of Title No. 813,728.

SUBJECT, HOWEVER, to the following:

1. Setback (50 feet wide), road setback line, as shown on Map 149 as set forth by Land Court Order No. 21581, filed August 8, 1963.
2. Grant dated May 31, 1991, recorded in said Office as Document No. 1824808, in favor of Hawaiian Electric Company, Inc., granting an easement for pole and wire lines, guy wires and anchors and/or underground power lines being within Lots 1414-A (Map 373) and Lot 3801 (Map 374).
3. Designation of Easement "6128" (30 feet wide) as shown on Map 881, for roadway and utility purposes, as set forth by Land Court Order No. 126489, filed December 26, 1996.
4. Terms and provisions contained in Deed dated April 29, 1997, recorded in said Office as Document No. 2377941.

SUBJECT, HOWEVER, as to FIRST and SECOND to the following:

1. Terms and provisions contained in Declaration dated June 21, 1993, recorded in said Office as Document No. 2036525.
2. Terms and provisions contained in Declaration dated February 26, 1996, recorded in said Office as Document No. 2292321, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-026308.
3. Terms and provisions contained in Declaration dated June 3, 2004, recorded in said Office as Document No. 3118516.

Said above Declaration was amended by instrument dated February 14, 20—, filed in said Office as Document No. 3230997.

4. Unrecorded Lease No. L01070900, dated August 14, 1997, made by and between The Trustees under the Will and of the Estate of James Campbell, Deceased, as Lessor, and Hawaii Motor Sports Center, a Hawaii limited partnership, as Lessee, for a term of three (3) years commencing April 30, 1997 and ending on April 30, 2000.

Said Lease was amended by unrecorded Amendment of Hawaii Raceway Park Lease dated May 11, 2000, re: Extending the term of the lease commencing May 1, 2000 and ending April 30, 2003, etc.

Said Lease was further amended by unrecorded Second Amendment of Hawaii Raceway Park Lease dated May 5, 2003, re: Extending the term of the lease commencing May 1, 2003 and ending on April 30, 2006, etc.

5. Grant of Easement dated December 23, 1960, filed in said Office as Document No. 270168, in favor of The Hawaiian Electric Company, Inc. and Hawaiian Telephone Company.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

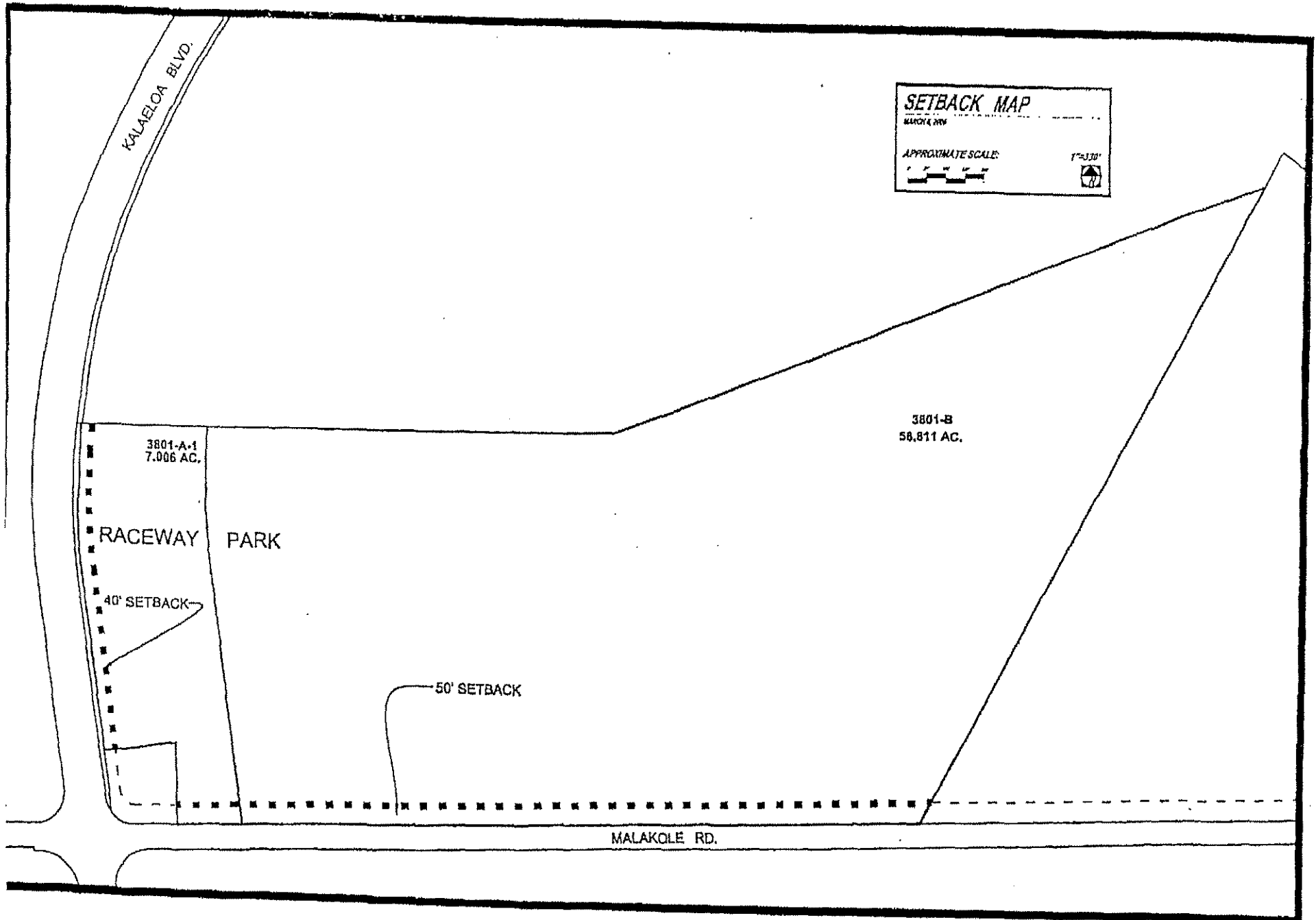
7. Any unrecorded leases and matters arising from or affecting the same.

8. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

End of Exhibit A

07-42

EXHIBIT B



Deed

07-42

EXHIBIT "C"

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was
recorded as follows:

DOCUMENT NO. _____

DATE Doc 3656886
CTN 813,728
SEP 17, 2007 03:29 PM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK UP (X) 521-9500

Imanaka Kudo & Fujimoto (OTI)
745 Fort Street, Suite 1700
Honolulu, Hawaii 96813

Tax Map Key No(s). (1) 9-1-75: 44 and 50

Total Pages: 14

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is made this 17th day of September 2007, by and between HMC IRONGATE HAWAII RACEWAY INVESTORS LLC, a Delaware limited liability company ("IRONGATE"), the business address of which is 10880 Wilshire Boulevard, Suite 2222, Los Angeles, California 90024 and the DEPARTMENT OF TRANSPORTATION, a department of the State of Hawaii ("DOT"), the business address of which is 869 Punchbowl Street, Honolulu, Hawaii 96813-5097.

RECITALS:

A. IRONGATE is the owner of those certain parcels of land situated at Honouliuli, City and County of Honolulu, Island of Oahu, State of Hawaii, containing approximately 65.817 acres, being LOT 3801-A-1 (approximately 7.006 acres), as shown on Map 907, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased, being a portion of the land described in and covered by Land Court Certificate of Title No. 813,728; and LOT 3801-B (approximately 58.811 acres), as shown on Map 881, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased, being a portion of the land described in and covered by Land Court Certificate of Title No. 813,728; and further identified on the Tax Maps of the State of Hawaii as Tax Map Key Nos. (1) 9-1-75: 44 and 50, respectively (collectively, the "Property"), as more particularly shown on Exhibit "A" attached hereto and made a part hereof.

B. The Property was redesignated from the State Land Use Agricultural District to State Land Use Urban District by the State Land Use Commission ("SLUC"), subject to conditions by the Order Adopting Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order dated July 31, 1995, in Docket No. BR94-711 ("Decision and Order"). In accordance with and in satisfaction of Condition No. 8 of the Decision and Order, IRONGATE has submitted a Traffic Impact Analysis Report dated September 14, 2006 ("Traffic Impact Study") for the proposed development of the Property and has entered into this Memorandum of Agreement which details IRONGATE's level of funding and participation in the construction of local and regional transportation improvements and dedication of rights-of-way as determined by DOT.

C. IRONGATE has met with DOT staff and based on these meetings has committed to improvements that will be provided by IRONGATE to mitigate traffic impacts of the proposed development of the Property, in accordance with recommendations of the Traffic Impact Study and further recommendations of DOT staff.

D. IRONGATE is desirous of rezoning the Property to an IMX-1 Industrial-Commercial Mixed Use District ("IMX-1 District") and/or an I-2 Intensive Industrial District ("I-2 District") for development of industrial lots and/or industrial condominium units (collectively, "Lots") to be sold to end users for uses permitted within these zoning districts.

NOW, THEREFORE, in consideration of the recitals and the promises and agreements herein, IRONGATE and DOT agree as follows:

1. **IMPROVEMENTS BY IRONGATE.** Subject to the rezoning of the Property to an IMX-1 District and/or an I-2 District, IRONGATE shall construct the following improvements recommended by the Traffic Impact Study:

a. Kalaeloa Boulevard at Malakole Street

i. Add a second (double) left-turn lane on the makai-bound Kalaeloa Boulevard approach. The dual left turn lanes shall provide 300 feet of full storage width per lane with appropriate taper.

ii. Widen Malakole Street to accommodate the dual makai-bound left-turn lanes. Widening is proposed to extend from Kalaeloa Boulevard to Oihana Street.

iii. Construct an exclusive left turn lane on the westbound approach of Malakole Street. The turn lane shall provide 250 feet of full storage with appropriate taper.

iv. Extend the westbound right turn lane on Malakole Street to provide 300 feet of full storage with appropriate taper.

v. Revise the traffic signal phasing and timing to reflect the recommended geometric changes.

b. Malakole Street at Oihana Street/Access 1

i. In conjunction with the Malakole Street widening to accommodate the dual left turn lanes, construct a left turn lane on the eastbound approach of Malakole Street at Access 1. The left-turn lane shall be a continuation of the widening of Malakole Street based on the dual southbound left-turn lanes proposed for the Malakole Street/Kalaeloa Boulevard intersection. In effect, the through lane adjacent to the centerline would end as the left-turn lane at the Oihana Street intersection.

ii. Construct a westbound right-turn lane on Malakole Street at Access 1. The turn lane shall provide 100 feet of storage with appropriate taper.

iii. Construct separate left- and right-turn lanes on the Access 1 approach to Malakole Street.

iv. Monitor and give consideration to installing a traffic signal if warranted in the future.

c. Malakole Street at Komohana Street / Access 2

i. Construct a left-turn lane on eastbound Malakole Street at Access 2. The turn lane shall provide 100 feet of storage with appropriate taper.

ii. Construct a right-turn lane on westbound Malakole Street at Access 2. The turn lane shall provide 100 feet of storage with appropriate taper.

iii. Construct separate left- and right-turn lanes on the Access 1 approach to Malakole Street.

The improvements noted in parts a through c of this paragraph 1 may be modified by IRONGATE, subject to the prior written consent of DOT, based on the updates to the Traffic Impact Study discussed in paragraph 5 below.

2. **IMPROVEMENTS BY CAMPBELL.** James Campbell Co. LLC or its affiliate ("Campbell") intends to design and construct the upgrading of Kalaeloa Boulevard to six lanes between the OR&L right-of-way and Malakole Street to the standards of the City and County of Honolulu ("City"). Subject to the rezoning of the Property to an IMX-1 District and/or an I-2 District, IRONGATE shall either: (a) enter into an agreement with Campbell regarding IRONGATE's level in participation in the funding of the upgrading of Kalaeloa Boulevard (widening to three lanes mauka bound) fronting the Property, up to the median to meet City standards as part of Campbell's larger improvement project; or (b) construct the portion of said improvements fronting the Property.

3. **COMPLETION OF IMPROVEMENTS.** IRONGATE shall complete the improvements to be constructed by IRONGATE pursuant to paragraphs 1 and 2, above, as follows:

a. Subdivision. If the Property is subdivided, the improvements shall be a condition of final subdivision approval and IRONGATE shall comply with normal City procedures and requirements for subdivision approval.

b. Condominium. If the Property is submitted to a condominium property regime, the improvement shall be completed or IRONGATE shall provide DOT with sufficient assurance of completion acceptable to DOT, in its sole discretion, prior to the issuance of a certificate of occupancy for any building erected on the Property and prior to the rental or conveyance of any condominium unit to a third party.

c. Other Development. If the Property is not subdivided or submitted to a condominium property regime, the improvements shall be completed or IRONGATE shall provide DOT with sufficient assurance of completion acceptable to DOT, in its sole discretion, prior to the issuance of a certificate of occupancy for any building erected on the Property and prior to the rental or conveyance of any property interest or portion of the Property to a third party.

4. **PLANS AND SPECIFICATIONS FOR IMPROVEMENTS; INDEMNIFICATION.**

Prior to the commencement of construction of any improvements required to be constructed by IRONGATE pursuant to paragraphs 1 and 2, above, IRONGATE shall deliver to DOT all plans and specifications relating to the construction of said improvements ("Plans and Specifications") along with a copy of this Agreement. DOT shall have the opportunity to review the Plans and Specifications submitted by IRONGATE and may propose to IRONGATE in writing any objections or proposed changes (including the reason therefor).

If DOT shall deliver to IRONGATE objections or proposed changes to the Plans and Specifications, IRONGATE shall submit to DOT such modified or additional Plans and Specifications to address or correct DOT's objections and proposed changes to such Plans and Specifications. Upon receipt of such modified or additional Plans and Specifications, DOT shall have the opportunity to review such items following the same procedures set forth above.

Notwithstanding DOT's review and/or approval of the Plans and Specifications, DOT shall not be responsible for any error or omission in the Plans and Specifications, or a part thereof, or for any portion of the Plans and Specifications that result in or cause a defective design or construction or a loss or damage to any party. IRONGATE shall indemnify and hold harmless DOT, its officers, employees and agents from and against all liability, loss, damage, cost and expense, including reasonable attorney's fees, and all claims, suits and demands therefor, arising out of, resulting from, or related to the design or construction of any improvements required to be designed and/or constructed by IRONGATE pursuant to this Agreement.

5. **TRAFFIC IMPACT STUDIES.** IRONGATE shall provide two updates of the Traffic Impact Study. An update of the Traffic Impact Study shall be done at the time that off-site improvement plans (widening of Kalaeloa Boulevard and/or Malakole Street) are submitted to the City for review, and a second update to the Traffic Impact Study shall be submitted at the time that building permits are issued for Lots totaling eighty percent (80%) of the land area of developable Lots on the Property. IRONGATE shall undertake subsequent mitigative measures that may be reasonably required and recommended by the updates to the Traffic Impact Study. These updates to the Traffic Impact Study and subsequent reasonable mitigative measures shall

be coordinated with and approved by DOT and the City's Department of Transportation Services ("DTS").

6. **LOT OWNERS' ASSOCIATION.** IRONGATE shall establish an association which shall include all owners of the proposed Lots ("Association") that will have as one of its responsibilities the promotion of alternative transportation opportunities that would optimize the use of existing and proposed transportation systems. The Association shall either: (1) designate a transportation manager who shall facilitate the coordination of actions and promotions with DOT and DTS; or (2) join the Leeward Oahu Transportation Management Agency which serves to provide transportation management services to its members.

7. **DISCLOSURES AND/OR RESTRICTIONS REGARDING THE PROPERTY.**

a. IRONGATE shall inform all prospective purchasers or lessees of the Lots of the potential impacts, including, but not limited to, odor, dust, fumes or air traffic and aircraft noise that may be generated by the proximity of the Property to the airport at Kalaeloa. IRONGATE shall include the following language in deeds and sales documents providing the necessary notification disclosure to prospective buyers of the Lots (Grantee for deeds and Buyer for sales documents):

"The Grantee/Buyer understands and acknowledges that the Property is located near the airport at Kalaeloa, which may in the future be used for military or civilian uses, including, by way of example and not in limitation thereof, the operation of a civilian airport and/or the operation of a military installation. The Grantee/Buyer further understands that the Department of Transportation, Airports Division, its successors and assigns, for the use and benefit of the public, has a right of flight for the passage of aircraft in the airspace above the surface of the Property from both the Honolulu International Airport and the airport at Kalaeloa. Such uses could include low flying aircraft together with the inherent noise, vibration, disturbances or other hazards associated with such uses near or over the Property. The Property may in the future be subject to increased noise impacts and inherent vibration, disturbances or other hazards associated with such uses near or over the Property from expanded airport operations. The Grantee/Buyer acknowledges and assumes all risks related to any noise, vibration and other disturbances and nuisances associated with such uses."

b. IRONGATE acknowledges that the Federal Aviation Administration ("FAA") has indicated that the proposed 60-foot height limit for the Property is acceptable; provided, however, that the FAA shall require that all applicants for building permits on the Lots submit an FAA Form 7460-1 on any proposed development for an aeronautical review by the FAA prior to the submittal of building permit applications. Accordingly, IRONGATE shall include the following language in deeds and sales documents providing the

necessary notification disclosure to prospective buyers of the Lots (Grantee for deeds and Buyer for sales documents):

"The Grantee/Buyer shall submit to the Federal Aviation Administration for review and approval FAA Form 7460-1 for any building, structure or improvements to be erected or constructed on the Property by the Grantee/Buyer prior to submittal of applications for building permits or other permits required for said building, structure or improvements."

c. IRONGATE shall include the following language in deeds and sales documents providing the prohibition of certain activity related to aircraft overflights (Grantee for deeds and Buyer for sales documents):

"The Grantee/Buyer shall not allow the growth of natural objects that would constitute a wildlife hazard (a habitat or breeding or nesting grounds for wildlife that would create a hazard for air navigation) and/or an obstruction to air navigation."

d. IRONGATE acknowledges that the Property will not have direct vehicular access from Kalaeloa Boulevard. IRONGATE shall inform all prospective purchasers or lessees of the Lots of this restriction and shall include the following language in deeds and sales documents providing the necessary notification disclosure to prospective buyers of the Lots (Grantee for deeds and Buyer for sales documents):

"The Grantee/Buyer understands and acknowledges that the Property will not have direct vehicular access to Kalaeloa Boulevard. No driveway, internal roadway or other form of vehicular access from the Property to Kalaeloa Boulevard shall be constructed without the prior written consent of the Department of Transportation, Highways Division."

8. **ACKNOWLEDGEMENT OF DOT.** DOT acknowledges that it has agreed to IRONGATE's level of funding and participation in the construction of local and regional transportation improvements and programs set forth in this Agreement, as required by Condition No. 8 of the Decision and Order. DOT further acknowledges that it has reviewed IRONGATE's proposals for the monitoring of traffic attributable to the proposed development and for the implementation of a program for traffic management set forth in this Agreement, and approves of said proposals in connection with the requirements of Condition No. 9 and Condition No. 10 of the Decision and Order, respectively.

9. **BINDING EFFECT.** Upon execution of this Agreement by the parties, this Agreement shall become binding and enforceable according to its terms. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party and their respective successors and assigns.

10. **AUTHORIZATION.** Each party warrants to each other party that the individuals executing this Agreement on behalf of the respective parties are authorized to do so.

11. **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement of the parties and supersedes any other agreements and understandings with respect to the subject matter hereof that may have existed between the parties.

12. **COUNTERPARTS.** The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

13. **AMENDMENT.** Notwithstanding anything provided herein, this Agreement may be amended only by each party signing a subsequent written instrument which sets forth the amendment.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, IRONGATE and DOT have caused these presents to be executed as of the day and year first above written.

**HMC IRONGATE HAWAII RACEWAY
INVESTORS LLC**, a Delaware limited
liability company

By: Irongate Hawaii Raceway Investors
LLC, a Delaware limited liability
company,
Its Managing Member

By _____
Name: Joshua Crane
Its: Authorized Representative

"IRONGATE"

**STATE OF HAWAII DEPARTMENT
OF TRANSPORTATION**

By _____
Name: Barry Fikunaga
Its: Director

"DOT"

Approved as to Form and Content:

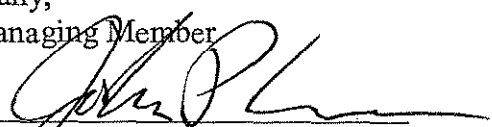
OFFICE OF THE ATTORNEY GENERAL
STATE OF HAWAII

Name: _____
Deputy Attorney General

IN WITNESS WHEREOF, IRONGATE and DOT have caused these presents to be executed as of the day and year first above written.

**HMC IRONGATE HAWAII RACEWAY
INVESTORS LLC**, a Delaware limited
liability company

By: Irongate Hawaii Raceway Investors
LLC, a Delaware limited liability
company,
Its Managing Member

By 
Name: Joshua Crane
Its: Authorized Representative

"IRONGATE"

**STATE OF HAWAII DEPARTMENT
OF TRANSPORTATION**

By _____
Name: Barry Fukunaga
Its: Director

"DOT"

Approved as to Form and Content:

OFFICE OF THE ATTORNEY GENERAL
STATE OF HAWAII

Name:
Deputy Attorney General

STATE OF HAWAII

)

) ss.

CITY & COUNTY OF HONOLULU

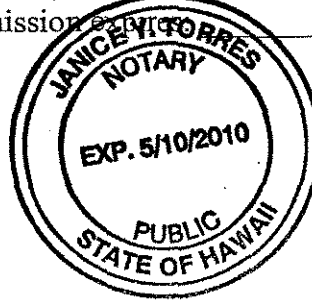
)

On this 17th day of September 2007, before me appeared Joshua Crane to me personally known, who, being by me duly sworn, did say that he is an officer of the HMC IRONGATE HAWAII RACEWAY INVESTORS LLC, a Delaware limited liability company; that the foregoing instrument was signed in behalf of said limited liability company; and the said officer acknowledged said instrument to be the free act and deed of said limited liability company.

Print Name: _____

Notary Public, State of Hawaii

My commission expires _____



STATE OF HAWAII

)

) ss.

CITY AND COUNTY OF HONOLULU

)

On this 17th day of September 2007, before me appeared Barry Fukunaga to me personally known, who, being by me duly sworn, did say that he is the Director of the Department of Transportation, State of Hawaii; that the foregoing instrument was signed in his capacity as the Director of the Department of Transportation, an agency of the State of Hawaii; and the said Director acknowledged said instrument to be executed as his free act and deed.

Print Name: _____

Notary Public, State of Hawaii

My commission expires _____

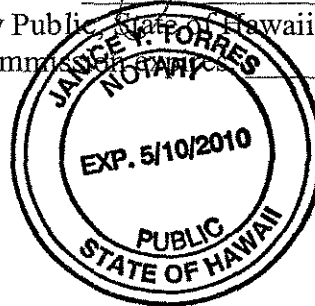


EXHIBIT "A"

All of those certain parcels of land situate at Honouliuli, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

FIRST:

LOT 3801-A-1 (area 7.006 acres), as shown on Map 907, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

TOGETHER WITH access over and across Lot 425-C-1, as shown on Map 373, as set forth by Land Court Order No. 72368, filed January 11, 1985.

BEING a portion of the land described in and covered by Certificate of Title No. 813,728 issued to the Trustees under the Will and of the Estate of James Campbell, Deceased.

SUBJECT, HOWEVER, to the following:

1. Setback (40 feet wide), road setback line, as shown on Map 149 as set forth by Land Court Order No. 21581, filed August 8, 1963.
2. Setback (50 feet wide), as shown on Map 149 as set forth by Land Court Order No. 21581, filed August 8, 1963.
3. Designation of Easement "6259", as shown on Map 907, as set forth by Land Court Order No. 128936, filed September 15, 1997.
4. Designation of Easement "7764", as shown on Map 1129, for communication purposes, as set forth by Land Court Order No. 146214, filed June 10, 2002.
5. Grant dated March 13, 2003, filed in said Office as Document No. 2904270, in favor of Verizon Hawaii Inc., a Hawaii corporation, now known as Hawaiian Telcom, Inc., granting a perpetual right and easement for utility purposes, over, under, upon, across and through Easement "7764".
6. Designation of Easement "8265", as shown on Map 1215, for sanitary sewer purposes, as set forth by Land Court Order No. 157919, filed September 2, 2004.

SECOND:

LOT 3801-B (area 58.811 acres), as shown on Map 881, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

TOGETHER WITH access over and across Lot 425-C-1, as shown on Map 373, as set forth by Land Court Order No. 72368, filed January 11, 1985.

BEING a portion of the land described in and covered by Certificate of Title No. 813,728 issued to the Trustees under the Will and of the Estate of James Campbell, Deceased.

SUBJECT, HOWEVER, to the following:

1. Setback (50 feet wide), road setback line, as shown on Map 149 as set forth by Land Court Order No. 21581, filed August 8, 1963.
2. Grant dated May 31, 1991, recorded in said Office as Document No. 1824808, in favor of Hawaiian Electric Company, Inc., granting an easement for pole and wire lines, guy wires and anchors and/or underground power lines being within Lots 1414-A (Map 373) and Lot 3801 (Map 374).
3. Designation of Easement "6128" (30 feet wide) as shown on Map 881, for roadway and utility purposes, as set forth by Land Court Order No. 126489, filed December 26, 1996.
4. Terms and provisions contained in Deed dated April 29, 1997, recorded in said Office as Document No. 2377941.

SUBJECT, HOWEVER, as to FIRST and SECOND to the following:

1. Terms and provisions contained in Declaration dated June 21, 1993, recorded in said Office as Document No. 2036525.
2. Terms and provisions contained in Declaration dated February 26, 1996, recorded in said Office as Document No. 2292321, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-026308.
3. Terms and provisions contained in Declaration dated June 3, 2004, recorded in said Office as Document No. 3118516.

Said above Declaration was amended by instrument dated February 14, 20—, filed in said Office as Document No. 3230997.

4. Unrecorded Lease No. L01070900, dated August 14, 1997, made by and between The Trustees under the Will and of the Estate of James Campbell, Deceased, as Lessor, and Hawaii Motor Sports Center, a Hawaii limited partnership, as Lessee, for a term of three (3) years commencing April 30, 1997 and ending on April 30, 2000.

Said Lease was amended by unrecorded Amendment of Hawaii Raceway Park Lease dated May 11, 2000, re: Extending the term of the lease commencing May 1, 2000 and ending April 30, 2003, etc.

Said Lease was further amended by unrecorded Second Amendment of Hawaii Raceway Park Lease dated May 5, 2003, re: Extending the term of the lease commencing May 1, 2003 and ending on April 30, 2006, etc.

5. Grant of Easement dated December 23, 1960, filed in said Office as Document No. 270168, in favor of The Hawaiian Electric Company, Inc. and Hawaiian Telephone Company.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Any unrecorded leases and matters arising from or affecting the same.

8. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

End of Exhibit A

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 07-42

BILL 53 (2007), CD1

Introduced: 06/26/07 By: BARBARA MARSHALL (BR)

Committee: ZONING

Title: A BILL FOR AN ORDINANCE TO REZONE LANDS SITUATED AT 91-101 MALAKOLE STREET AT THE MALAKOLE STREET INTERSECTION WITH KALAELOA BOULEVARD, EWA, OAHU, HAWAII.

Links: [BILL 53 \(2007\)](#)
[BILL 53 \(2007\), CD1](#)
[D-517\(07\)](#)
[CR-266](#)
[CR-302](#)

| | | | | | |
|--|-------------|---|--------------|--------|----------|
| COUNCIL | 07/05/07 | BILL PASSED FIRST READING AND REFERRED TO ZONING COMMITTEE. | | | |
| | APO Y | CACHOLA Y | *DELA CRUZ Y | DJOU Y | GARCIA Y |
| | KOBAYASHI Y | MARSHALL Y | OKINO Y | TAM Y | |
| (*Note: Councilmember Dela Cruz was absent and not excused and pursuant to Council Rule 12.3 was recorded as an affirmative vote.) | | | | | |
| ZONING | 07/31/07 | CR-266 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING AS AMENDED IN CD1 FORM. (DEADLINE FOR COUNCIL ACTION: 9/23/07) | | | |
| PUBLISH | 08/04/07 | PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN. | | | |
| COUNCIL//PUBLIC HEARING | 08/15/07 | BILL PASSED SECOND READING AS AMENDED (BILL 53 (2007), CD1), CR-266 ADOPTED, PUBLIC HEARING CLOSED AND REFERRED TO ZONING COMMITTEE. | | | |
| | APO Y | CACHOLA E | DELA CRUZ Y | DJOU E | GARCIA Y |
| | KOBAYASHI Y | MARSHALL Y | OKINO Y | TAM Y | |
| PUBLISH | 08/24/07 | SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN. | | | |
| ZONING | 09/04/07 | CR-302 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING. (Deadline: 9/23/07) | | | |
| COUNCIL | 09/19/07 | CR-302 ADOPTED AND BILL 53 (2007), CD1 DEFERRED UNTIL THE NEXT COUNCIL MEETING. | | | |
| | APO Y | CACHOLA Y | DELA CRUZ Y | DJOU Y | GARCIA Y |
| | KOBAYASHI Y | MARSHALL Y | OKINO Y | TAM Y | |
| COUNCIL | 10/17/07 | BILL 53 (2007), CD1 PASSED THIRD READING | | | |
| | APO N | CACHOLA Y | *DELA CRUZ Y | DJOU Y | GARCIA Y |
| | KOBAYASHI Y | MARSHALL Y | OKINO Y | TAM Y | |
| (*Note: Councilmember Dela Cruz stated "kanalua" twice and pursuant to Rule 12 became an "aye".) | | | | | |

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


RENISE C. DE COSTA, CITY CLERK


BARBARA MARSHALL, CHAIR AND PRESIDING OFFICER